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October 23, 2006

Board of Forestry and Fire Protection  
Attn: Christopher Zimny  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

*Via Email*

**RE: Comments on Road Management Plan, 2006**

Dear Chairman Dixon and Members of the Board,

The following comments on the "Road Management Plan, 2006" proposed rule package are submitted on behalf of Sierra Club California. Please continue to include both this office and the Sierra Club, California, 1414 K Street, Suite 500, Sacramento, 95814, Attn: Paul Mason, in any further communications to the public on these proposed rules.

In general, the rule package contains: (1) unacceptably ambiguous and inadequate terms and definitions, procedures for review and approval, and other requirements; (2) weak, vague, unenforceable and ultimately unacceptable substantive standards for plan preparation and implementation, as well as standards that conflict with or duplicate other standards found in the Forest Practice Rules (FPRs). In fact, the proposed rules are so inadequate that they are highly unlikely to pass muster with the Office of Administrative Law with regard to clarity, consistency and non-duplication. See Gov. Code, §§ 11349(c), (d), (f); 11349.1(a). We also question the necessity of these rules, given that they are not adding any new requirements that do not already exist in the FPRs, such as a requirement to comprehensively evaluate the cumulative impacts of roads, landings and watercourse crossings on fish, wildlife, water quality and other resources. See Gov. Code, § 11349(a).

This rule package suffers from a further fatal flaw in that it is fundamentally inconsistent with, and significantly less stringent than, the existing rules. The California Administrative Procedures Act requires all regulations to be "in harmony with, and not in conflict with or contradictory to, . . . other provisions of law." Gov. Code, §§ 11349(d), 11349.1(a)(4).

Thank you for your careful consideration of these comments.

Sincerely,

Brian Gaffney

cc: Sierra Club, California

## **The Proposed Rules Do Not Adequately Specify the Purpose, Goals, and Performance Standards for an RMP**

The proposed rules state that the purpose of an RMP is to carry out the purposes of the Forest Practice Act (FPA) and to inform “decision makers and the public of potential significant environmental effects related to use and management of roads for on-going management activities on timberlands.” Proposed 14 CCR § 1093. However, a fundamental purpose of an RMP *also* should be to identify ways to avoid, minimize *and* mitigate the significant adverse effects of roads, landings, watercourse crossings, culverts, etc. on the environment, as required by the FPA, FPRs and the California Environmental Quality Act (CEQA).

Further, the language stating that an RMP “addresses long-term issues . . . resulting from the impacts of transportation systems” is ambiguous. *Id.* It is unclear what is meant by “addresses,” what are “long-term issues,” and what is intended to be encompassed within the “transportation system.” The definition of an RMP in the proposed rules is similarly unedifying, stating that an RMP “describes the long-term management of a transportation system.” Proposed 14 CCR § 1093.1. Again, it is unclear what is meant by “long-term management” and “transportation system,” and thus it is unclear what an RMP is ultimately supposed to be designed to do.

Finally, the proposed rules do not limit how long an RMP may be in effect and how broad an area it may cover. See proposed 14 CCR § 1093.1, definition of “road management unit.” An RMP may be in effect for as long as an SYP, PTEIR, or NTMP – potentially decades of time -- and may cover a virtually unlimited area. See *id.* and proposed 14 CCR § 1093.5. Yet, the proposed rules contain no express requirement to update an RMP to ensure that the analysis in the plan will remain current and relevant throughout the life of the plan. Rather, the determination whether and when to update the plan appears to lie with the timberland owner. Proposed 14 CCR § 1093.3(c)(F)(5). However, the proposed rules authorize timberland owners to incorporate the cumulative impact analysis in the RMP by reference into subsequent plans, without a determination as to whether that analysis continues to be adequate. Proposed 14 CCR § 1093.

We also are concerned that, given the duration of an RMP and the vague provisions of these proposed rules as outlined below, timberland owners may attempt to use an RMP, similar to how some are viewing a PTEIR, as a means of avoiding compliance with subsequently adopted rules, contrary to the FPA. See Pub. Resources Code, § 4583; *Public Resources Protection Assn. v. Calif. Dept. of Forestry* (1994) 7 Cal. 4<sup>th</sup> 111, 121.

## **The Proposed Rules Contain Numerous Vague and Undefined Terms, Standards and Procedures**

Throughout, the proposed rules contain numerous undefined terms, phrases, standards and procedures that are unacceptably vague and ambiguous. These include, but are not limited to, such overarching terms and phrases as “transportation system,” “environmental resources,” “long-term management,” roads and “related facilities,” “discharge,” and “significant constraints.” Other key terms do not cross-reference existing definitions so it is impossible to determine how they are to be defined and construed. For example, “threatened or endangered species” is defined in both the California Endangered Species Act and the CEQA Guidelines, but the latter definition is broader.

## **The Proposed Rules Do Not Specify the Process for Review and Approval of an RMP**

The proposed rules do not clearly require an RMP to be reviewed and approved by CDF as part of a THP or other plan. In the absence of such a requirement, there is no clear process for public review and comment on, or CDF evaluation of, an RMP. Proposed section 1093 states that an RMP “*may be submitted at the option of one or more timberland owners as part of a plan for the Director’s review and approval,*” emphasis added. Proposed section 1093.6 states that “[w]hen a (sic) RMP is submitted as part of a Plan, the Director shall so indicate in the notice of filing.” Likewise, while proposed section 1093.5 and the proposed amendment to section 1037 set forth requirements for an RMP that is attached to another plan, these sections also do not expressly *require* that an RMP be associated with a plan. Thus, the process for review and approval of an RMP set forth in the rules is plainly insufficient.

Furthermore, even if the proposed rules are construed to require all RMPs to be attached to a THP or other plan, this is an inadequate procedure to ensure full public participation in reviewing and commenting on an RMP. Instead, the rules must require an RMP to be separately noticed for public review and comment.

## **The Proposed Rules Do Not Require an RMP to Be Prepared and Reviewed by the Appropriate Experts**

The proposed rules do not require the relevant components of an RMP to be prepared by appropriate qualified professionals (i.e. licensed geologists, hydrologists, biologists). Rather, they simply state that an RPF *may* be required to utilize the services of other licensed professionals and qualified experts if mandated by the Professional Foresters Law. See proposed 14 CCR § 1093.2(f). However, given the highly technical nature of the subject matter of an RMP, an RPF is unlikely to be qualified to prepare most aspects of such a plan. Consequently, an RMP prepared solely by an RPF is likely to be technically inadequate and inaccurate in many critical respects.

In addition, the rules should require an RMP to be reviewed by both the Regional Water Quality Control Board and Department of Fish and Game. The proposed rules, however, do not specify any role for the Regional Board and only require DFG concurrence for exceptions to allowing fish passage on existing watercourse structures on Class I streams. See proposed 14 CCR § 1093.3(c)(21). This is insufficient participation by the review team agencies with expertise in the subject matter of an RMP. Simply relying on the review team process is insufficient to ensure adequate agency review because the proposed rules are unclear as to whether an RMP must be appended to another plan that *is* subject to the review team process.

Furthermore, these rules do not specify a process for obtaining DFG concurrence. Absent a requirement for DFG’s formal, written concurrence, DFG’s failure to submit a non-concurrence could be construed as a *de facto* “concurrence.” To address these problems, the rules should require DFG’s and the Regional Board’s formal, written concurrence as to any aspect of the RMP that involves identification and evaluation of, and standards of protection for, fish and wildlife resources, watercourses and water quality.

## **The Proposed Rules Contain Woefully Inadequate Standards for an RMP**

- **Guidelines for an RMP (14 CCR § 1093.2)**

The required contents and scope of, and level and type of information required for, an RMP are so open-ended, vague and unclear that it is impossible to determine what actually is required. For example, the “guidelines for orderly evaluation of activities proposed by an RMP” (proposed section 1093.2) state that an RMP must include identification of “long-term access and transportation objectives of the timberland owner,” “identification of biological habitat . . . and water quality concerns,” and “identification of public safety, soil productivity and soil stability, and fugitive dust air quality concerns.” Proposed 14 CCR § 1093.2(a)-(c). Critical terms, such as “transportation objectives,” “water quality concerns” and “public safety concerns” are not defined. Moreover, the requirements for evaluation of impacts to species and habitat are far too limited. Section 1093.2 is the only place such impacts are referenced at all. The requirements for analysis and mitigation of impacts of the road system on terrestrial species are particularly insufficient, given that presence of large mammals is known to decrease in relation to road density.

Proposed section 1093.2 goes on to provide that “the information and management practices in an RMP will be scaled to the condition, sensitivity and trend of the condition of the beneficial uses of water and other resources.” Proposed 14 CCR § 1093.2(g); see also 14 CCR § 1093.3(c)(2)(C)(3) [requiring an assessment of the “transportation system related to location, condition, trend, and sensitivity of beneficial uses of water and other resources”]. The rules do not specify who makes this “scaling” determination, to what “resources” it applies, what is meant by such key terms as “condition,” “sensitivity” and “trend,” and how the scaling determination will be made, i.e. what criteria govern such determination. Thus, the RMP “guidelines” are so vague as to be virtually useless.

- **Contents of an RMP (14 CCR §§ 1093.2, 1093.3)**

#### Significant ambiguities

Similar clarity issues exist with respect to the specific requirements concerning the content of an RMP. The various required “elements” of, and key terms and phrases in, an RMP are not defined, their scope is unclear, and there are no standards or criteria for their preparation or evaluation. For example, the rules for the evaluation element do not state at what scale the watersheds must be described, and do not define or explain key terms such as “historic” road system or roads, “inventory and assessment,” etc. Proposed 14 CCR § 1093.3(c)(2). Rules for the goals element state that maps must be “at a scale and detail sufficient to allow the Director to evaluate the area covered by the RMP.” Proposed 14 CCR § 1093.3(c)(1)(D); see also *id.*, § 1093.3(c)(2)(C)(2) [evaluation element must include road system maps “at a scale sufficient to clearly show the classification of all roads and their location”]. However, it is not clear what would constitute a “sufficient scale.” The same types of ambiguities exist in the rules for the operational element, which is discussed in more detail below.

#### Inadequate goals, standards and requirements which are inconsistent with existing FPRs

Additionally and even more importantly, the overall goals, substantive standards and mitigation requirements for an RMP are inadequate and unenforceable, and give far too much

discretion and authority to the timberland owner and plan preparer to determine both the plan goals and the appropriate level of mitigation and resource protection. In general, the proposed rules do not require an RMP to meet any particular objectives, standards or performance criteria. Rather, they only require an RMP to “address” or “include” a discussion of certain subjects, giving the timberland owner and plan preparer the discretion to determine the level of detail in the plan and the type and extent of mitigation measures and standards to be met, if any. It is not at all clear what would be considered sufficient to “address” a given subject.

For these and other reasons, in many respects, the standards and requirements for an RMP are significantly less stringent than, in conflict with, or at best duplicative of, the existing FPRs and CEQA (as well as a host of other laws) and would potentially allow an RMP to be prepared that is inconsistent with the FPRs. See 14 CCR §§ 923 *et seq.*, 943 *et seq.*, 963 *et seq.* [existing FPRs governing logging roads and landings]. This is particularly true with regard to existing rules for threatened and impaired watersheds. The proposed rules do not expressly require that an RMP meet all applicable FPR requirements. It is also important to note that the existing FPRs must be complied with on a site-specific basis, while the RMP would appear to allow a generalized and non-site specific discussion of these same issues, which could then presumably be incorporated into and relied upon by subsequent THPs. This is likely to result in a substantial weakening of the application of existing rules.

#### Inappropriate and excessive delegation of authority and discretion to timberland owner

As an illustration of the above problems, the rules state that an RMP “may be as extensive and detailed as the timberland owner desires,” and may contain a host of exceptions, in lieu or alternative practices. Proposed 14 CCR § 1093.2(h).<sup>1</sup> Moreover, information requirements for an RMP “shall be guided by the principles of practicality and reasonableness.” Proposed 14 CCR § 1093.4. Most egregiously, contrary to the existing rules, the proposed rules allow the *timberland owner* to specify the “desired future conditions, performance standards, and priorities for the road system and beneficial uses of water and other resources.” Proposed 14 CCR § 1093.3(c)(1)(B). These specifications must be as “needed to attain the objectives of the RMP” (*id.*), which likewise are determined solely by the timberland owner, with no governing standards or criteria specified. See proposed 14 CCR § 1093.3(c)(1)(A); see also *id.*, § 1093.3(c)(3)(F) [RMP may propose “different practices as appropriate to achieve identified goals and objectives”]. There are no criteria or limitations on what may constitute legitimate “objectives” of the timberland owner – it appears that they could be anything.

Similarly, the mitigation measures in an RMP need only be “consistent with . . . the objective of the timberland owner,” again, as determined by the timberland owner. Proposed 14 CCR § 1093.2. The operational element of an RMP need only “minimize” total road length and the number of watercourse crossings “commensurate with operational limitations *and the objectives of the timberland owner.*” Proposed 14 CCR § 1093.3(c)(3)(F)(4), *emphasis added*. These provisions are

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<sup>1</sup> The language concerning exceptions, in lieu practices and alternatives is inconsistent with other provisions of the FPRs pertaining to these subjects, which require in lieu practices and alternatives to be explained, justified and evaluated on a site-specific, THP-by-THP basis. See, e.g., 14 CCR §§ 897(e), 914.9, 916.1.

inconsistent with other provisions of the FPRs and CEQA, which require THPs and other plans to incorporate alternatives and mitigation measures that avoid or substantially lessen the significant adverse impacts of timber operations, and which require the timberland owner to meet specified mitigation standards. The timberland owner's mitigation obligation under the FPRs is not qualified by his or her objectives. See, e.g., 14 CCR §§ 896, 897(a), 898(c). Likewise, the requirements to mitigate cumulative impacts in the proposed rules are vague and potentially inconsistent with the existing FPRs. Proposed 14 CCR § 1093.

The proposed rules also delegate undue discretion to the timberland owner to determine the level and schedule for implementation of mitigation. With respect to the evaluation element of an RMP, for example, the timberland owner is allowed to determine the level of priority of (e.g. risk posed by) sources of sediment and structures without fish passage, and the schedule for "addressing" priority sediment sources and modifying these structures. Proposed 14 CCR § 1093.3(c)(2)(C)(5)-(6). The timberland owner similarly determines the treatments and schedule for road improvement and abandonment. Proposed 14 CCR § 1093.3(c)(3)(C).

#### Mitigation obligation further inappropriately qualified by feasibility and other considerations

The proposed rules regarding the content of an RMP also contain numerous references to "feasibility," cost, practicality, appropriateness and other similar considerations in preparing an RMP, which inappropriately allows the timberland owner to give these considerations priority over environmental protection. For example, the rules state that impaired beneficial uses of water need only be restored "insofar as feasible." Proposed 14 CCR § 1093.2(d). However, restoration of impaired water bodies is governed by the threatened and impaired watershed rules and other FPRs, basin plans and total maximum daily load implementation plans adopted pursuant to the federal Clean Water Act and state Porter Cologne Water Quality Control Act, which do not necessarily contain similar feasibility limitations.

Numerous other purported requirements need only be implemented to the extent the timberland owner deems them "feasible" or "appropriate." This includes provisions regarding avoiding construction or reconstruction of new roads in WLPZs or on steep slopes or unstable areas, use of existing landings and roads, use of variable road grades and alignments, installation of drainage structures and correction of past diversions. Proposed 14 CCR § 1093.3(c)(3)(F)(2), (5), (6), (16), (22). Other impacts, including erosion, sediment delivery, and placement of materials on steep slopes, must be "minimized," but not necessarily avoided or otherwise mitigated to any particular standard. Proposed 14 CCR § 1093.3(c)(3)(F)(1), (3), (8), (9), (15).<sup>2</sup>

#### Other inadequate standards and procedures for impact evaluation and mitigation

Even absent the insertion of qualifying language limiting a timberland owner's mitigation obligation, as discussed above, the impact evaluation and mitigation requirements of the proposed rules are simply inadequate on their face and fail to address the significant environmental impacts

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<sup>2</sup> As another example of the limitations on mitigation requirements, the evaluation element of the RMP must identify "significant constraints associated with the transportation system," including but not limited to "social, economic and legal" constraints, and how these constraints affect the RMP. Proposed 14 CCR §§ 1093.3(c)(2)(B), 1093.3(c)(2)(C)(3)(vi).

of the timber harvesting road system in any meaningful way. For instance, the proposed rules place no explicit limit on new road construction and reconstruction or new watercourse crossings. An RMP may provide for new roads in WLPZs and on steep slopes and unstable areas and new watercourse crossings on Class I watercourses. See 14 CCR § 1093.3(c)(F)(2), (20). In some respects, these provisions are weaker than the existing rules. See, e.g., 14 CCR § 923.1(h) [“[r]oad construction *shall* be planned to stay out of” WLPZs], emphasis added.

The rules also do not clearly require closure and removal of existing roads or removal of existing barriers to fish passage. Although there is some reference to road “abandonment,” this is not necessarily the same thing, nor is abandonment mandatory. See 14 CCR §§ 1093.3(c)(3)(D), 1093.3(c)(F)(27). The rules also allow exceptions to the requirement that existing structures on Class I watercourses provide for fish passage. Proposed 14 CCR § 1093.3(c)(3)(F)(21). Transportation infrastructure inspection and maintenance requirements are virtually non-existent, and the requirements that do exist are unduly vague. Proposed 14 CCR §§ 1093.3(c)(3)(B), 1093.3(c)(3)(F)(27). Further, these provisions are in conflict with the existing FPRs. See 14 CCR § 923.4, 943.4, 963.4 [road maintenance requirements].

The proposed rules also do not require adequate field identification and evaluation of roads, sediment sources, fish passage, fish presence, etc., and allow a timberland owner to rely on “inventoried” roads and information “known” at the time of plan submission. See, e.g., proposed 14 CCR §§ 1093.3(c)(1)(D), 1093.3(c)(2)(C)(3)(iv), 1093.3(c)(3)(F)(20), (21). Once again, many of these requirements are weaker than existing rules. *Compare* proposed 14 CCR § 1093.3(c)(3)(F)(20) with existing 14 CCR § 923.3(c) and proposed § 1093.3(c)(3)(F)(21) with existing § 923.2(g). Amazingly, the rules do not even require an RMP to include a complete inventory and assessment of the road system covered by the plan. Instead, the plan may include a “prioritized schedule for completion of the inventory” – again, as determined solely by the timberland owner. Proposed 14 CCR § 1093.3(C)(2)(B).

#### Inadequate monitoring, reporting and adaptive management procedures

Finally, the monitoring, reporting and adaptive management provisions for an RMP (the RMP “verification” and “adaptive management” elements) are vague and ineffective. Monitoring provisions are totally open-ended, and may rely on “representative conditions,” which is undefined. Proposed 14 CCR § 1093.3(c)(4)(B). No written monitoring report is required. Proposed 14 CCR § 1093.3(c)(4)(C). Frequency of reporting may be less than annually, as specified in the RMP. (*Id.*) With respect to adaptive management, once again, the timberland owner determines the criteria and procedures for updating and revising the RMP and other requirements, such as monitoring methods. Proposed 14 CCR § 1093.3(c)(5).

#### **Miscellaneous Comments**

The proposed rules appear to authorize an RMP to be used to meet the requirements of other environmental laws (such as the federal and state Clean Water Acts) – see proposed 14 CCR § 1093.3(c)(1)(C), but do not require an RMP to come anywhere close to meeting the requirements of these other laws.

If prevention and minimization of “the spread of noxious weeds,” as required by sections 1093.2(e) and 1093.3(c)(3)(F)(28) of the proposed rules, will involve use of herbicides and other chemicals, this must be addressed in the RMP.

Finally, we question whether an RMP is subject to CDF’s functionally equivalent certification under CEQA. The certification only applies to the “regulation of timber harvesting operations on private lands in California.” 14 CCR § 15251(a). We do not believe that this certification covers long-term, ownership-wide management plans, such as RMPs, that provide an overall planning framework for timber operations, but that do not themselves authorize timber operations. Consequently, the rules should make clear that CEQA compliance is required for preparation of an RMP.

## **Conclusion**

In sum, the proposal has far too many fundamental flaws and serious shortcomings to be adopted as rule language by the Board. We urge the Board to refer the package back to committee, and not to bring it forth again until it has explicit definitions of all key terms, clear enforceable standards that meet or exceed the existing FPRs and will achieve protection and recovery of resource values on both a plan-wide and site-specific basis, and a clear procedure for review and approval of the RMP that allows ample review by the interested public and the other review team agencies.